

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DWIGHT ABERNATHIE,

Plaintiff,

No. 4:23-CV-01044-RLW
Hon. Henry Edward Autrey

v.

CARL HART, et al.,

Defendants.

Ian T. Cross (P83367)
Margolis & Cross
Attorney for Plaintiff
402 W. Liberty St.
Ann Arbor, MI 48103
(734) 994-9590
ian@lawinannarbor.com

Eric Doner (#68029)
MO Office of the Attorney General
Attorney for Defendants
815 Olive Street, Suite 200
St. Louis, MO 63101
(314) 340-7871
Eric.Doner@ago.mo.gov

JOINT PROPOSED SCHEDULING ORDER AND DISCOVERY PLAN

NOW COME the parties, by and through their respective counsel, and pursuant to Rules 16(b) and 26(f) of the Federal Rules of Civil Procedure, submit the following Joint Proposed Scheduling Order and Discovery Plan:

INTRODUCTION

The parties conducted their Rule 26(f) meeting on February 26, 2024, and reached an agreement on the items set forth below.

JOINT RULE 26(f) DISCOVERY PLAN

1. Initial Disclosures

The parties agree that all pre-discovery disclosures required by Rule 26(a)(1) shall be exchanged on or before **March 27, 2024**.

3. Amendments to Pleadings:

The parties agree that the pleadings may need to be amended to substitute the names of Doe-defendant corrections officers once such defendants' identities are ascertained through discovery, and as necessary to conform the pleadings to evidence produced in discovery.

4. Lay Witness List

The parties agree that the deadline to disclose Lay Witnesses shall be **June 30, 2024**.

5. Expert Disclosures

The parties agree to set deadlines to identify their experts, produce experts for deposition, and for Daubert motion practice after dispositive motions have been ruled on.

6. Discovery Cutoff

The parties agree that the Discovery Cutoff date should be **July 31, 2024**.

a. Depositions and Written Discovery:

The parties agree that the presumptive limits of 25 interrogatories per party as set forth in Fed. R. Civ. P. 33(a) should apply. The parties also agree that the presumptive limit of 10 depositions per side should apply.

b. Subjects on Which Discovery May be Needed:

The parties agree discovery regarding any non-privileged matter that is relevant to any party's claim or defense as provided by Rule 26(b)(1) of the Federal Rules of Civil Procedure should be permitted. Discovery is anticipated regarding the state and federal investigations conducted regarding this incident, any internal incident reports produced by Missouri Department of Corrections, policies, practices, and procedures of the Missouri Department of Corrections, the personnel files of the named defendants, and facility surveillance footage capturing the use of force, the aftermath of the use of force, and the events leading up to the use of force against the Plaintiff. This listing of anticipated discovery topics is not intended to be exclusive.

7. Discovery with Respect to Electronically Stored Information:

The parties do not anticipate any serious issues with production of ESI.

8. Preservation of ESI:

The parties agree that they have endeavored to preserve all potentially relevant ESI, and that imposition of a preservation order is not necessary at this time.

9. Dispositive Motions:

The parties propose a deadline for Dispositive motions **August 31, 2024**. All Response briefs shall be filed by **September 30, 2024**. All reply briefs shall be filed by **October 14, 2024**.

10. Other Orders That Should be Entered by the Court:

The parties agree that there are no other orders that need to be entered by the Court at this time.

11. Trial Date/Estimated Number of Days to Try Action:

To be set by the Court after dispositive motions are ruled on.

Respectfully submitted,

/s/Ian T. Cross
Ian T. Cross (P83367)
Margolis & Cross
Attorney for Plaintiff
ian@lawinannarbor.com

/s/ Eric Doner
Eric Doner (#68029)
MO Office of the Attorney General
Attorney for Defendants
Eric.Doner@ago.mo.gov

Dated: March 11, 2024

CERTIFICATE OF SERVICE

I hereby certify this Joint Proposed Scheduling Order and Discovery Plan was electronically filed electronically via PACER with the Court for service by means of Notice of Electronic filing upon all attorneys of record on March 11, 2024.

A copy was sent via regular mail to Defendant at:

Carl Hart #35661-510,
FCI Oxford, Federal Correctional Institution,
P.O. Box 1000
Oxford, WI 53952

This is the 11th day of March, 2024.

/s/Nathan Lumbard

Nathan Lumbard

Paralegal

Margolis & Cross

402 W. Liberty St.

Ann Arbor, MI 48103

nathan@lawinannarbor.com